

**Electronic Production Letter
Attachment 1**

[DATE]

[COUNSEL]

Re: Proposed Acquisition of [TARGET CO.] by [ACQUIRING CO.]
Electronic Production

Dear [COUNSEL]:

I am writing to provide specific information regarding the Division's requirements for receiving an electronic document production in response to the Second Request issued in relation to the above transaction. Definition & Instruction [O(4)] of the Second Request calls for the electronic production of electronic documents and information. This letter describes the basic features of an electronic production that would satisfy the obligations of a Second Request, but it does not constitute a modification of the Second Request. Further, this letter does not address or endorse any search method counsel may use to identify responsive electronic documents.

To ensure the efficient processing and review of any such electronic production, Division legal, economic, and technical staff would like to resolve the details prior to production, and preferably before [COMPANY] or its vendor begins to gather and process responsive documents. It is in both our interests to minimize the time and effort it takes to produce and review the responsive materials. We will make ourselves available so that we can resolve the details of the production promptly.

I have enclosed a questionnaire seeking basic information about your client's electronic systems and back-up and archiving policies. Answers in writing will greatly assist our discussion about electronic production and speed up negotiations. Please supply answers as soon as possible.

A. Categories of Documents

We believe that any discussion regarding the details of an electronic production should focus on six categories of documents: (1) hard-copy, (2) e-mail and other electronic messages (e.g., instant messaging), (3) other electronic documents, (4) shared resources, and (5) databases[, **and (6) company intranet(s)**]. General requirements for each category of document are outlined below. For information regarding document-specific metadata and bibliographic information (identifying information), please refer to the enclosed table.

1. Hard-Copy (or Paper) Documents

Hard-copy documents may be produced as image files with related searchable OCR text and bibliographic information or in hard-copy form. Special attention should be paid to ensure that hard-copy documents are produced as they are kept, reflecting attachment relationships

between documents and information about the file folders within which the document is found, consistent with Definition & Instruction [O(1)] of the Second Request. In addition, multi-page documents must be produced as a single document (i.e., properly unitized) and not as several single-page documents.

2. E-mail and Other Electronic Messages

E-mail and other electronic messages (e.g., instant messages (IMs)) should be produced as image files with related searchable text and metadata and bibliographic information. Each IM conversation should be produced as one document. Depending on how the company's systems represent names in e-mail messages or IMs, we may require a table of names or contact lists from custodians.

3. Electronic Documents

Electronic documents include word-processing documents, spreadsheets, presentations, and all other electronic documents not specifically discussed elsewhere in this letter. Except as noted below, production of these items should include image files with related searchable text and metadata and bibliographic information (including filepath information).

A. Spreadsheets

Spreadsheets should be produced in native format (e.g., as .XLS files) [**with only the first 5 pages imaged**] with related searchable text and metadata and bibliographic information.

B. Presentations

Presentations should be produced in full slide image format along with speaker notes, with any speaker notes following the full images of the slides (to both ease review and reduce volume and costs of production) with related searchable text and metadata and bibliographic information. Presentations should also be produced in native format (e.g., as .PPT files).

4. Shared Resources

Shared resources (e.g., shared drives or servers, shared filing cabinets) may need to be searched because a custodian has access to them or because they contain a specific category of responsive documents. They should be produced as separate custodians, with a brief description of each shared resource that includes a list of the employees who have access to that shared resource. The documents in shared resources should otherwise be produced as described in the rest of this letter.

5. Databases

We will need to discuss databases individually as soon as the Division receives a list of those that are responsive to the Second Request. This list should include a brief description of the contents/function of the database, the database platform, and its size. This will be very helpful in resolving what may need to be produced from any database. No database should be produced without discussions with the Division's staff.

[6. Company Intranet(s)

Company intranets are best discussed once you have identified what is responsive on the intranets. Depending on volume, what is being produced in the electronic production, and technical issues, it may be appropriate to provide Division staff direct access via a secure Internet connection, but significant technical challenges are often involved.]

B. Technical and Other Requirements

The technical requirements for the electronic production are as follows:

1. Form and Manner of the Production

[For Summation Databases]

The production should be pursuant to the attached Summation Database Specifications and should use the Summation database shell provided by the Division. Production should be on a "rolling basis." Each submission should be accompanied by an index of what is produced by custodian and Bates number, along with information to confirm that the Division has received everything that [COMPANY] intended to send. For further details, see the attached Summation Database Submission Requirements. Please note that a web-based production is not likely to be possible due to technical issues related to the Department's firewall.

To minimize the amount of time required to load your submissions, each submission should consist of as few Summation databases as possible. Each database within each submission should be as large as practical under the Summation Specifications and contain multiple custodians as grouped by the Division. Within any submission, documents from an individual custodian should all be in the same database. Submissions that contain (a) Summation databases with documents from an individual custodian spread across multiple databases or (b) Summation databases that are relatively small will not be sufficient to comply with the Second Request until they have either been replaced with complying Summation databases or until the Division has finished merging the produced Summation databases.

[For Summation Load Files]

The production should be pursuant to the attached Load File Request Specifications and should be provided on a "rolling basis." Each submission should be accompanied by an index of what is produced by custodian and Bates number, along with information to confirm that the Division has received everything that [COMPANY] intended to send. Please note that a web-based production is not likely to be possible due to technical issues related to the Department's firewall.

To minimize the amount of time required to load your submissions, each production should be as large as practical under the Summation Load File Submission Requirements and contain multiple custodians as grouped by the Division. Documents from an individual custodian should all be in the same submission. Subsequent submissions for custodians that have already

been produced should be grouped by custodian in the same manner as the earlier submission. Productions that contain (a) Summation load files with documents from an individual custodian spread across multiple submissions; or (b) Summation load files that are relatively small will not be sufficient to comply with the Second Request until they have either been replaced with complying Summation load files or until the Division has finished loading the produced Summation load files. A subsequent submission should not include information produced in a previous submission, unless requested by the Division.

2. Native Format Files

Native format files require that the Division has the associated software and any necessary licenses to view the documents. Please notify the Division's legal staff as soon as possible of any documents to be produced from electronic documents in any native format to make sure that we have the capability to open and view these documents. Password protection should be removed from all files. Additionally, please provide a list of all native formats that will be provided to the Division, and confirm that the Division has the appropriate software and licenses.

3. Image and Text Files

Image files must be produced in the following manner:

- Images must be Group IV single-page TIFF files;
- There should be no spaces in file names and image files should be named "<PageID>.TIF" (e.g., "DOJ-005.TIF");
- The TIFF images for a single document should be in one folder and not split across multiple folders; and
- The number of image files in a folder should not exceed 5,000.

Text files must be produced in the following manner:

- Text files should include page breaks that correspond to the "pagination" of the image files;
- There must be a carriage return and line feed in the first 80 characters of each text file;
- For hard-copy documents the text files should be produced using OCR techniques, but text should be extracted directly from electronic documents; and
- All full text, whether produced using OCR techniques or extracted from native files, should be loaded as OCR.

4. Privilege Designations

Items withheld or redacted pursuant to any assertion of privilege should be so designated in the Summation Database, as indicated in the attached Metadata and Bibliographic Information Table in the properties ("Prpties") field. When any privileged document is withheld and is an attachment to another or a larger "family" of documents, its absence due to privilege should be designated accordingly in the "properties" field for its "parent" document and all "sibling" attachments in the family.

5. Deduplication Methods

Deduplication should occur both vertically within each custodian and horizontally across custodians. Vertical deduplication is crucial with the production of electronic documents from back-up tapes. Horizontal deduplication must be done in a manner to preserve and produce information on blind copy (Bcc) recipients of e-mails and other custodians who have the duplicates that will be eliminated from the production. Before doing any deduplication, provide the Division with a written description of the method used to deduplicate (including what information is compared and what hash codes are used) and what is considered a duplicate, and confirm that your approach is acceptable to the Division. However, there can be no deduplication of “loose” electronic documents (e.g., presentation slides located on the custodians C: drive) against e-mail attachment versions of those same documents; the integrity of any produced e-mail must be maintained except as limited by any claim of privilege. The Division does not agree to any deduplication of hard-copy documents.

6. Hard-Copy/Native Format File Production Waiver

Except as otherwise agreed, if hard-copy and electronic documents are produced electronically as agreed, [COMPANY] will not have to produce hard-copy documents in actual hard-copy form or produce electronic documents in native file format, unless specifically requested by the Division in order to properly interpret the document or in response to certain requests relating to unforeseen circumstances. However, please note that some documents may more appropriately and efficiently be produced in hard-copy (e.g., color documents, maps).

7. Physical Production

The Division can accept electronic production loaded onto hard drives, CD-ROMs, or DVD-ROMs; however, it has been our experience that production on hard drives minimizes costs and delay. Other methods may be possible, but a direct feed or download is likely not a viable option for reasons similar to those that preclude other web-based solutions. The method chosen should be discussed with the Division’s legal staff prior to production.

8. Bates Numbering Identification

Bates numbering should use a consistent format across the entire production. In general, Bates numbers should contain hyphens and no more than three segments: for example, a company identifier, a middle segment (e.g., custodian identifier), and a sequence number of 6-8 digits (the number of digits should be consistent across the entire production). Bates numbers should not contain embedded spaces (“ ”), slashes (“/”), backslashes (“\”), or underscores (“_”). Native format files should also be assigned a Bates number; if images have been produced with a native format file, the beginning Bates number of the images should be the native format file’s Bates number.

9. Sample Submission Required Prior to Full Production

A sample submission must be provided to the Division for testing and comment, before you “ramp up” production. To minimize the likelihood of encountering problems during full production, the sample must be representative of an actual production, including multiple types

of documents and documents with attachments. With databases (as opposed to load files), the process of checking the sample can take as few as three business days.

We invite you to schedule an initial meeting with Division staff to discuss these issues as soon as possible after reviewing this letter. We further request that any vendor you use participate in discussions relating to [COMPANY]'s electronic production, along with any of your firm's IT personnel who will be involved in the production. In our experience, it is particularly important to hold discussions about databases and back-up/archival systems early on, as such considerations can save significant time and effort. Please feel free to contact me at [PHONE #].

Sincerely,

[STAFF CONTACT]
Attorney
[SECTION]

Enclosures

Questions about Electronic Systems and Back-up/Archiving Policies
Metadata and Bibliographic Information Table
Summation Database Specifications
Summation Database Submission Requirements